

§ 92.17

making this recommendation, the examining official will consider all relevant factors including, but not limited to, the following:

- (A) The scope of the misuse;
 - (B) The purpose and/or nature of the misuse;
 - (C) The extent of the harm caused by the misuse;
 - (D) The circumstances of the misuse;
 - (E) The commercial benefit intended to be derived from the misuse; and
 - (F) The repeated nature of the misuse.
- (iv) If the examining official determines that a violation has occurred, a proposed Final Notice of Assessment that incorporates his or her findings and recommendations.
- (v) Any additional information or considerations that the assessing officer should consider in a decision whether to issue a Final Notice of Assessment under § 92.17.

§ 92.17 Final action.

(a) In making a final determination whether to impose a penalty, the assessing official shall take into consideration the entire report prepared by the examining official. Although the assessing official should accord appropriate weight to the findings and recommendations of the examining official, the assessing official is not bound by them. The assessing official may approve, disapprove, modify, or substitute any or all of the examining official's findings and recommendations if, in his or her judgment, the evidence in the record supports such a decision. The assessing official will determine whether:

- (1) The facts warrant a conclusion that no violation has occurred; or
 - (2)(i) The facts warrant a conclusion that one or more violations have occurred; and
 - (ii) The facts and violations found justify the conclusion that a civil penalty should be imposed.
- (b) If the assessing official determines that no violation has occurred, the official shall promptly send a letter indicating that determination to the person served with an Initial Notice of Assessment and to any designated representative of such person.

31 CFR Ch. I (7–1–08 Edition)

(c) If the assessing official determines that a violation has occurred:

(1) The assessing official shall issue a Final Notice of Assessment to the person served with an Initial Notice of Assessment and to any designated representative of such person.

(2) The assessing official may, in his or her discretion:

- (i) Impose a civil penalty;
- (ii) Not impose a civil penalty; or
- (iii) Impose a civil penalty and suspend the payment of all or some of the civil penalty, conditioned on the violator's future compliance with 31 U.S.C. 333.

(3) If a civil penalty is imposed under § 92.17(c)(2)(i) or (iii), the assessing official shall determine the appropriate amount of the penalty in accordance with 31 U.S.C. 333(c)(2). In determining the amount of a civil penalty, the assessing official will consider relevant factors including, but not limited to, the following:

- (i) The scope of the misuse;
- (ii) The purpose and/or nature of the misuse;
- (iii) The extent of the harm caused by the misuse;
- (iv) The circumstances of the misuse;
- (v) The commercial benefit intended to be derived from the misuse; and
- (vi) The repeated nature of the misuse.

(4) The Final Notice of Assessment shall:

- (i) Include the following:
 - (A) A specific reference to each provision of § 92.13 found to have been violated;
 - (B) A concise statement of the facts supporting a conclusion that each violation has occurred;
 - (C) An analysis of how the facts and each violation justifies the conclusion that a civil penalty should be imposed; and
 - (D) The amount of each civil penalty imposed and a statement as to how the amount of each penalty was determined; and
- (ii) Inform the person of the following:

(A) Payment of a civil penalty imposed by the Final Notice of Assessment must be made within 30 days of the date of the notice;

Monetary Offices, Treasury

§ 100.2

(B) Payment of a civil penalty imposed by the Final Notice of Assessment shall be paid by EFT in accordance with instructions provided in the notice, unless the assessing official has given written approval to have payment made by other means;

(C) If payment of a civil penalty imposed by the Final Notice of Assessment has been suspended on the condition that the person comply in the future with 31 U.S.C. 333 and this subpart, the failure by the person to so comply will make the civil penalty payable on demand;

(D) If a civil penalty is not paid within 30 days of the date of the Final Notice of Assessment (or on demand under paragraph (c)(3)(ii)(D) of this section), a civil action to collect the penalty or enforce compliance may be commenced at any time within two years of the date of the Final Notice of Assessment; and

(E) Any civil penalty imposed by the Final Notice of Assessment may be subject to judicial review in accordance with 5 U.S.C. 701 *et seq.*

§ 92.18 Judicial review.

A Final Notice of Assessment issued under the procedures in this subpart may be subject to judicial review pursuant to 5 U.S.C. 701 *et seq.*

PART 100—EXCHANGE OF PAPER CURRENCY AND COIN

Sec.

100.2 Scope of regulations; transactions effected through Federal Reserve banks and branches; distribution of coin and currencies.

Subpart A—In General

100.3 Lawfully held coins and currencies in general.

100.4 Gold coin and gold certificates in general.

Subpart B—Exchange of Mutilated Paper Currency

100.5 Mutilated paper currency.

100.6 Destroyed paper currency.

100.7 Treasury's liability.

100.8 Packaging of mutilated currency.

100.9 Where mutilated currency should be transmitted.

Subpart C—Exchange of Coin

100.10 Exchange of uncurrent coins.

100.11 Exchange of bent and partial coins.

100.12 Exchange of fused and mixed coins.

100.13 Criminal penalties.

Subpart D—Other Information

100.16 Exchange of paper and coin to be handled through Federal Reserve banks and branches.

100.17 Location of Federal Reserve banks and branches.

100.18 Counterfeit notes to be marked; "redemption" of notes wrongfully so marked.

100.19 Disposition of counterfeit notes and coins.

AUTHORITY: 31 U.S.C. 321.

SOURCE: 47 FR 32044, July 23, 1982, unless otherwise noted.

§ 100.2 Scope of regulations; transactions effected through Federal Reserve banks and branches; distribution of coin and currencies.

The regulations in this part govern the exchange of the coin and paper currency of the United States (including national bank notes and Federal Reserve bank notes in process of retirement and Federal Reserve notes). Under authorization in the Act approved May 29, 1920, 41 Stat. 655 (31 U.S.C. 476), the Secretary of the Treasury transferred to the Federal Reserve banks and branches the duties and functions performed by the former Assistant Treasurers of the United States in connection with the exchange of paper currency and coin of the United States. Except for the duties in this respect to be performed by the Treasurer of the United States and the Director of the Mint, as may be indicated from time to time by the Secretary of the Treasury, exchanges of the paper currency and coin of the United States and the distribution and replacement thereof will, so far as practicable, be effected through the Federal Reserve banks and branches. The Federal Reserve banks and branches are authorized to distribute available supplies of coin and currency to depository institutions, as that term is defined in section 103 of the Monetary Control Act of 1980 (Pub. L. 96-221). As authorized by section 107 of the Act, transportation of coin and currency and coin wrapping